**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**
(Special Original Jurisdiction)

PRESENT
**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

**WRIT PETITION No.22196 of 1997**

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**Date: 01.12.2006**

Between:
Smt.M.Rajanarsu, W/o.Ramaswamy,
Khammam
... PETITIONER

AND

1. The District Collector,
Kothagudem, Khammam District and another
.....RESPONDENTS

**WRIT PETITION No.22196 of 1997**

**ORDER:**

This writ petition has been instituted questioning the order passed by the Mandal Revenue Officer, Kothagudem on 09.06.1997 evicting the petitioner from out of the land of an extent of Ac.3.00 situated in Survey No.1/1 of Garimallapadu village, Kothagudem Mandal, Khammam District, as she was declared to be an encroacher.

The case of the petitioner is that she belongs to scheduled caste and that she is a landless poor person and that she occupied the land of the Government situated in Survey No.1/1 of an extent of Ac.3.00 somewhere around 1960 and that she has been cultivating the said land, and thus, eking out her livelihood. The petitioner has also pointed out that on a previous occasion, a notice under Section 7 of the Andhra Pradesh Land Encroachment Act (for short 'the Act') has been issued to her on 15.12.1990 and that in response thereto she filed explanation and also participated in the enquiry and that the then Mandal Revenue Officer passed orders through his proceedings in R.C.No.B/8607/90, dated 31.12.1990 permitting the occupation of the petitioner duly dropping the proceedings for her proposed eviction and therefore she could not, now be, once again sought to be evicted from the very same land in 1997. The principal grievance of the petitioner is that she continues to be a landless poor person and after occupying the land in question she had been in possession of the same and cultivating the same. But, in spite of the same, the present Mandal Revenue Officer has initiated the proceedings purposefully to deny the benefits of the petitioner of her continuous occupation and enjoyment of the land in question. Therefore, according to the learned counsel for the petitioner, there are no *bona fides* behind the exercise of the Mandal Revenue Officer in seeking to evict her from out of the land in question.

The learned counsel for the petitioner would further urge that the Mandal Revenue Officer has passed the impugned order on 09.06.1997

in violation of the principles of natural justice and that after issuing the show cause notice, in spite of the request of the petitioner for further time to place necessary and adequate material for establishing the genuineness of her claim, without according further time, the Mandal Revenue Officer had not only proceeded to conclude the hearing but went on to pass a very lengthy order on 09.06.1997, and that he has also seen that the said order is pasted on the residence of the petitioner without tendering the same for service. The Mandal Revenue Officer has also secured a panchanama regarding the eviction of the petitioner while in fact the petitioner had been continuously in possession of the property not only on 09.06.1997, but even subsequent period thereto. Thus, the entire action taken by the Mandal Revenue Officer would indicate lack of *bona fides* on his part in passing the present impugned order.

Per contra, the learned Government Pleader for Revenue had pointed out that the petitioner has not been assigned the land in question at all, and that on her own showing, she had come to occupy the said three acres of land, owned and belonging to the Government. By order dated 31.12.1990, the previous Mandal Revenue Officer did permit the petitioner to continue to occupy the Government land, as she belongs to scheduled caste category and that she is still cultivating the said lands, but, however, emboldened as she were, the petitioner started taking steps and measures to change the nature of the land and also started attempting to convert the land for non-agricultural operations by proposing to layout the land as house sites for sale in favour of private parties. Thus, the petitioner had departed from a permissible activity of cultivating the lands to that of undertaking commercial activity. This apart, the petitioner and her three sons were employed in Singareni Collieries Company Limited at Kothagudem and therefore the petitioner and her family members have ceased to be dependent upon the agricultural operations to be carried out in the lands in question, and this apart, this land had now become adjacent to various educational

institutions etc., and hence this land can be put to better and effective use by the State Government by retrieving its possession from the clutches of the petitioner and their family members. Therefore, the learned Government Pleader for Revenue would urge that the action of the Mandal Revenue Officer, Kothagudem in passing the orders on 09.06.1997 is not only *bona fide* but is an act undertaken by him for preserving and protecting the interests of the State and nothing else.

These factual disputes cannot be adjudicated or resolved in this writ petition for want of proper evidence. Secondly, a physical inspection of the land perhaps would truthfully disclose the veracity of the claims made by either of the parties and it would be advantageous for both sides to have such an inspection undertaken.

The fact remains that under Section 10 of the Act, an appeal would lie to the Revenue Divisional Officer against the order passed by the Mandal Revenue Officer. Normally, the proceedings under Article 226 of the Constitution of India would not be entertained wherever there is an efficacious alternative remedy available. I am not quite anxious to throw out this writ petition nearly after ten long years only on the ground of availability of an alternative remedy. But, however, I find that the alternative remedy is far more efficacious in view of the peculiar situations prevailing in the instant case.

On one hand, the petitioner asserts that she continues to be in possession of the land in question and that the land in question is still being cultivated and put to agricultural operations by her and her family members and therefore they have not violated the permission for continuous occupation of the land in question. The petitioner further asserts that she being a member belonging to the scheduled caste is squarely dependant upon the agricultural operations, which she is carrying on in the land in question. At the same time, we have the assertions of the State Revenue Administration that the petitioner and her family members have stopped utilizing the land in question for

agricultural operations and that they have already changed the nature of the land from agricultural land to that of commercial housing lay out and put such plots to sale. Since the petitioner did not have any title over the property and as the title over the property vests with the State Government, the petitioner cannot be permitted to convert the nature of the land from agricultural land to that of housing colony and hence, the State is entitled to retrieve its possession by evicting the petitioner from out of the land in question. We have also the assertions of the respondents that the petitioner and her family members are gainfully employed with the Singareni Collieries Company Limited, Kothagudem and consequently they are ineligible even for the grant of assignment of the land in their favour. These factual aspects perhaps can be ascertained with reference to the ground realities only. The appellate authority namely the Revenue Divisional Officer, Kothagudem perhaps would be in a fit position to undertake the physical inspection of the land in question in the presence of the petitioner and her family members and can ascertain the truth or otherwise about the ongoing agricultural operations or the proposed housing lay out. Therefore, it is wholly appropriate that the petitioner should avail the alternative remedy available by preferring an appeal to the Revenue Divisional Officer, Kothagudem and satisfy him that the nature of the land is neither altered nor attempted to be altered by the petitioner and her family members and that they are still dependent upon the agricultural operations for their living.

I, therefore, grant liberty and permission to the petitioner to avail the remedy of appeal available under Section 10 of the Act and the Revenue Divisional Officer, Kothagudem is directed to entertain any such appeal, if so preferred by the petitioner on or before 15th January, 2007. During the pendency of this writ petition, status quo of the nature of the land was ordered to be maintained.

I consider that the same status quo should be permitted to prevail till 31.01.2007 so that the petitioner can secure appropriate interlocutory

order by that time from the Revenue Divisional Officer.

With the above observations and directions, the writ petition is disposed of. There shall be no order as to costs.

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Nooty Ramamohana Rao, J

Date: 01.12.2006

**Note: Furnish CC in one week**

B/o

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